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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 ATLANTIC-PACIFIC PROCESSING
9 SYSTEMS, INC., a California corporation,

10 Plaintiff,

11 vs.

12 DERMAKTIVE, LLC, a Florida limited liability
13 company; JORDAN DUFNER, a Connecticut
resident; ADAM WELLINGTON, a Connecticut
resident; JOE HELEWA, a New York resident;
14 UPSURGE, LLC, a Delaware limited liability
company; UPSURGE MEDIA GROUP, LLC, a
Delaware limited liability company; WIDO,
LLC, a Delaware limited liability company,
15 DENIS BETSI, an Ontario, Canada resident; T1
PAYMENTS, LLC, a Nevada limited liability
company; and DONALD KADSON, a Nevada
resident,

16 Defendants.

17 DERMAKTIVE, LLC, a Florida limited liability
18 company; and JORDAN DUFNER, a
Connecticut resident,

19 Counter-Plaintiffs,

20 v.

21 ATLANTIC-PACIFIC PROCESSING
22 SYSTEMS, INC., a California corporation,

23 Counter-Defendant.

24 CASE NO. 2:16-CV-00739-JAD-PAL

25 **STIPULATION AND [PROPOSED]
ORDER RE DEFENDANTS DONALD
KASDON AND T1 PAYMENTS LLC'S
EMERGENCY MOTION TO QUASH
SUBPOENAS DUCES TECUM AND FOR
PROTECTIVE ORDER [DKT. 121] AND
SUPPLEMENT TO EMERGENCY
MOTION TO QUASH SUBPOENAS
DUCES TECUM AND FOR
PROTECTIVE ORDER [DKT. 122].**

1 Defendants T1 PAYMENTS LLC and DONALD KASDON (the “T1 Parties”), and,
2 Plaintiff ATLANTIC-PACIFIC PROCESSING SYSTEMS, INC. (“APPS”), Defendants
3 DERMAKTIVE, LLC, JORDAN DUFNER, and specially appearing Defendants ADAM
4 WELLINGTON, UPSURGE, LLC, UPSURGE MEDIA GROUP, LLC, and WIDO, LLC (the
5 “DermAktive Defendants”) (all parties hereto collectively the “Parties”), by and through their
6 respective counsel, hereby agree as follows and submit the following Stipulation and [Proposed]
7 Order by and through their counsel, and hereby agree to the following recitals in resolution of
8 Defendants Donald Kasdon and T1 Payments LLC’s Emergency Motion to Quash Subpoenas
9 Duces Tecum and for Protective Order [Dkt. 121] and Supplement thereto [Dkt. 122].

RECITALS

11 **WHEREAS**, On December 7, 2017, counsel for the T1 Parties was notified for the first
12 time by counsel for APPS that Subpoenas Duces Tecum were issued to Vantiv, LLC; Network
13 Merchants, LLC; and Payvision (collectively, the “Subpoenas”);

14 **WHEREAS**, On December 8, 2017, counsel for the T1 Parties sent an Objection Letter
15 to the Subpoenas.

16 **WHEREAS**, On December 8, 2017, Kory L. Kaplan, Esq. (“Mr. Kaplan”), counsel for
17 the T1 Parties, and Catherine A. Close, Esq. (“Ms. Close”), counsel for APPS, met and
18 conferred.

19 **WHEREAS**, On December 8, 2017, Donald Kasdon and T1 Payments LLC filed an
20 Emergency Motion to Quash Subpoenas Duces Tecum and for Protective Order [Dkt. 121].

21 **WHEREAS**, On December 11, 2017, the T1 Parties filed a Supplement to their
22 Emergency Motion to Quash Subpoenas Duces Tecum and for Protective Order [Dkt. 122].

WHEREAS, On December 14, 2017, APPS filed a Response to the T1 Parties' Emergency Motion to Quash Subpoenas Duces Tecum and for Protective Order [Dkt. 125].

25 **WHEREAS**, Between December 18, 2017 and December 20, 2017, Mr. Kaplan and Ms.
26 Close “met and conferred” again and were able to come to an agreement as outlined in this
27 stipulation.

28

1 **WHEREAS**, Ms. Close:

2 (1) notified all subpoenaed parties that the previously issued subpoenas duces tecum were
3 withdrawn and reissued with notice to undersigned counsel;

4 (2) notified Quantum Legal Support and Hutchison & Steffen, the deposition officers, to
5 destroy all records provided in response to the subpoenas duces tecum, and any copies, notes or
6 other materials that would reveal the contents of the documents received, if any have been
7 produced or received; and

8 (3) provided declarations from Quantum Legal Support and Hutchison & Steffen stating
9 that any documents that had already been received were not produced to APPS or its counsel and
10 that no documents were able to be received in the future since the upload function was disabled.

11 **WHEREAS**, The T1 Parties engaged the services of Litigation Services to act as the
12 substitute deposition officer to receive the documents responsive to the subpoenas duces tecum,
13 Bates label them if they are not already when received, and provide them to Mr. Kaplan only.

14 **WHEREAS**, The T1 Parties will review the documents responsive to the subpoenas
15 duces tecum, redact if necessary, and provide a privilege log to Ms. Close by January 15, 2018.
16 However, if the documents are voluminous, the Parties agree in good faith to allow an additional
17 reasonable amount of time for the T1 Parties to review and redact, if necessary.

18 **WHEREAS**, If APPS has any objections to the redactions by the T1 Parties, if any, the
19 T1 Parties will submit the unredacted documents to the Court for an in camera review and both
20 Parties may submit further briefing in support of their positions.

21 **STIPULATION**

22 **IT IS THEREFORE STIPULATED AND AGREED** by and between the parties
23 hereto as follows:

24 1. The Hearing on Donald Kasdon and T1 Payments' Emergency Motion to Quash
25 Subpoenas Duces Tecum and for Protective Order [Dkt. 121] and Supplement thereto [Dkt. 122],
26 currently scheduled for January 16, 2018, is vacated, with the Parties to each bear their own
27 attorneys' fees and costs;

28 2. The T1 Parties will review the documents responsive to the subpoenas duces

tecum, redact if necessary, and provide a privilege log to Ms. Close by January 15, 2018. However, if the documents are voluminous, the Parties agree in good faith to allow an additional reasonable amount of time for the T1 Parties to review and redact, if necessary.

3. If APPS has any objections to the redactions by the T1 Parties, if any, the T1 Parties will submit the unredacted documents to the Court for an in camera review and both Parties may submit further briefing in support of their positions.

IT IS SO STIPULATED.

DATED this 27th day of December, 2017

JULANDER, BROWN & BOLLARD

By /s/ Dirk O. Julander
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*Attorneys for Plaintiff and Cross-Defendant
Atlantic-Pacific Processing Systems, Inc*

DATED this 27th day of December, 2017

LARSON, ZIRZOW & KAPLAN

By /s/ Kory L.Kaplan
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*Attorney for Donald Kasdon
and T1 Payments LLC*

ORDER

Based on the foregoing Stipulation and good cause appearing, it is hereby ORDERED as follows:

1. The Hearing on Donald Kasdon and T1 Payments' Emergency Motion to Quash Subpoenas Duces Tecum and for Protective Order [Dkt. 121] and Supplement thereto [Dkt. 122], currently scheduled for January 16, 2018, is vacated, with the Parties to each bear their own attorneys' fees and costs;

2. The T1 Parties will review the documents responsive to the subpoenas duces tecum, redact if necessary, and provide a privilege log to Ms. Close by January 15, 2018. However, if the documents are voluminous, the Parties agree in good faith to allow an additional reasonable amount of time for the T1 Parties to review and redact, if necessary.

3. If APPS has any objections to the redactions by the T1 Parties, if any, the T1 Parties will submit the unredacted documents to the Court for an in camera review and both Parties may submit further briefing in support of their positions.

IT IS SO ORDERED.

Teggy A. Fees
U.S. Magistrate Judge

Date: January 4, 2018